DOCUMENT RESUME

ED 104 033 EA 006 986

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TITLE Administrative Responsibilities in Fair Dismissal Cases.
PUB DATE 22 Feb 75
NOTE 5p.; Paper presented at the Annual Convention of the American Association of School Administrators (107th, Dallas, Texas, February 21-24, 1975); Best Available Copy

EDRS PRICE MF-$0.76 HC-$1.58 PLUS POSTAGE
DESCRIPTORS *Administrator Responsibility; Civil Rights; *Due Process; Elementary Secondary Education; Legal Responsibility; Probationary Period; Teacher Certification; *Teacher Dismissal; *Teacher Employment; Teacher Evaluation; Tenure

ABSTRACT

Teacher dismissal is the culmination of a total process that involves hiring, evaluation, certification, and tenure. School administrators are advised to study the law, obey timetables, consult legal counsel, avoid interpreting law, proceed carefully, document all charges, and put important decisions in writing. Favorable decisions in dismissal cases are based on well-prepared, well-documented cases built on a valid reason. (Author/DW)

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AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS
107th Annual Convention
Dallas, Texas February 21-24, 1975

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TOPIC: Administrative Responsibilities in Fair Dismissal Cases

PLACE: Room E-409-10, Convention Center

TIME: 2:30, p.m., Saturday, February 22

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FOR RELEASE UPON DELIVERY

In an article in this month's American School Boards' Journal, I read that "a superintendent needs the practicality of Betty Crocker, the inventiveness of Gloria Steinem, the wisdom of Solomon, the hide of Dumbo, the sensitivity of an antenna, the tenderness attributed to women and a backbone of steel." I think this is particularly true and should be kept in mind as we discuss today's topic, "Administrative Responsibilities in Fair Dismissal Cases." I am not sure that there is such a thing as a completely fair dismissal. One can have varying points of view, I guess, depending on whether you are the dismissor or the dismissee. There are so many cases involving dismissals in education, that to attempt to cover even a small fraction of them would be an impossibility during the time allotted to us. Fair dismissal laws vary from state to state. I would like to quickly read to you two laws affecting tenured and non-tenured teachers in New York State. A tenured teacher, according to Chapter 717 of the Law of 1970 is entitled to certain legal rights according to section 3020-A of Education Law.

> "Charges filed with school district clerk-board must determine whether probably cause exists withing 5 days.
> --teacher must be notified and has 10 days to request hearing.
> -if no hearing requested, the Board within 15 days makes a determination and fixes penalty, if any.
> --if hearing is requested, the Commissioner of Education schedules the hearing within 20 days--Commissioner establishes a hearing panel list from lists submitted by statewide organizations.
> --Board of Education and the employee each choose one panel member and these two choose a third--if they can't agree, the Commissioner chooses.
> --Commissioner prescribes procedures for hearing and designates hearing officer--within five days after hearing, the Commissioner forwards a report of hearing, including findings and recommendations of panel, which are advisory only, to teacher and district clerk. Within 30 days of receipt of findings and recommendations, Board is to make determination and fix penalty, if any. Penalty may be reprimand, fine, suspension without pay or dismissal. Teacher may appeal to Commissioner of Education or seek review of the decision by instituting a procedure under Article 78 of the Civil Practice Law and Rules."

Under the Fair Dismissal Law of 1972 (not applicable in New York City) non-tenured New York State teachers are entitled to the following under Section 3031:

"Teachers employed on probation by any school district or by any board of cooperative educational services, as to whom a recommendation is to be made that appointement on tenure not be granted or that their services be discontinued shall, at least thirty days prior to the board meeting at which such recommendation is to be considered, be notified of such

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intended recommendation and the date of the board meeting at which it is to be considered. Such teacher may, not later than twenty-one days prior to such meeting, request in writing that he be furnished with a written statement giving the reasons for such recommendation and within seven days thereafter such written statement shall be furnished. Such teacher may file a written response to such statement with the district clerk not later than seven days prior to the date of the board meeting."

Laws such as these exist throughout our United States and we, as educators, must comply. Rather than become involved in the complexitites of dismissal as they exist, I would like to refer you to an article in Nation's Schools, March 1974, written by H.C. Hudgins, Jr. Dr. Hudgins cites ten commandments representing the latest legal thinking on when not to terminate a teacher.

1. Don't fire a teacher who has been arrested for possessing marijuana unless you have proof he can no longer function effectively in the classroom
2. Don't fire a teacher whose discussion of religion stirs up a local furor unless he is advancing or inhibiting a particular faith.
3. Don't fire a teacher for incompetency on the basis of poor student test scores alone.
4. Don't fire a teacher solely for being a homosexual unless his sexual inclinations adversely affect teaching performance.
5. Don't fire a teacher for criticizing the school administration unless he is using the classroom to advance his own gain or to promote a special interest.
6. Don't fire a teacher for insubordination unless school regulations are clearly stated or reasonably understood.
7. Don't fire a teacher for using too much creative freedom unless your restrictions were stated clearly and specifically beforehand.
8. Don't fire a tenured teacher without first knowing the nitty-gritty of tenure.
9. Don't fie a teacher for refusing to salute the flag.
10. Don't fire a teacher who brings alcohol into the school unless you can prove "just cause."

Dr. Hudgins clearly illustrates his points, pointing out case after case where the teacher was upheld. I must agree with Professor Hudgins, and yet, a good administrator might be inclidned to move rather swiftly concerning some of the matters discussed, perhaps too quickly.

Teacher dismissal really is the culmination of a total process which involves hiring, evaluation, certification, tenure, and a myriad of other considerations involving staff. For example, in New York State, according to a recent decision (Baer v. Nyquist) teachers must receive tenure on a braod-level basis such as elementary, secondary, special education or kindergarten. The Appellate Court Div. IV, in the matter of Silver, handed down a decision January 9 ordering a board to reinstate a petitioner, a social studies teacher, because there were five teachers on the staff who were junior in service to him. In a more recent decision, a certified Latin teacher who was teaching Latin and social studies was reinstated after the board had eliminated Latin from the school program. She was reinstated to teach English, yet New York State Law says that you can't teach in a subject area without proper certification. I guess you simply move a teacher to an area in which she is not certified and then dismiss her for non-certification. The legislators make the laws in the various states and they do make mistakes.

Fair dismissal in education is a little like sex. It affects just about all of us, but in different ways and it is difficult to provide an overall remedy or adser to the administrator who is faced with the problem of maintaining a good staff and faced with the complexities of law. No magic potion exists for us all. I am sure you have heard the story about the farmer who had pruchased a bull for breeding purposes and the bull had turned out to be a dud. The farmer had a friend who was a pharmacist and he asked him if he could help him out and the pharmacist developed a potion that he said he thought would work. The farmer

placed some of the mixture in the bull's drinking water and the following week the bull serviced 150 cows. A neighbor came over and asked the farmer what was in the mixture. The farmer said, "I don't know, but it tastes like peppermint."

I would like to make some recommendations concerning the chief school administrator and the law in regard to dismissal.

1. STudy the law and know the law in your state--every situation has a time table--when a statute says "three days notice" or "five days notice" or "within 15 days," don't assume what is 3, 5, or 15. Laws vary from state to state. For example, in New York State the law says that the day you serve a notice doesn't count. So if you serve a five-day notice on the first of the month, it is not fully effective until the sixth. Does a notice become effective when you mail it or when the person receives it? It's best to send it by certified mail, return receipt requested. Don't assume that the school attorney is up-to-date on all information. Laws change frequently by statute and by court action.

2. Consult your local counsel on procedures well in advance of any contemplated action.

3. As an educator, don't try to interpret such terms as "just cause" or "adequate notice." The court may interpret it differently. The law is not always clear, but even when it is, what is less clear is just how school administrators will respond to a sitution, what policies and procedures must be developed for compliance, how specific cases will be handled, and how the legal system will interpret the law and judge specific cases.

4. Proceed carefully. Law suits for defamation are increasing. Anything in writing is subject to legal challenge.

5. When you hire a teacher, if you find you have made a mistake, help him or, if necessary, fire him.

6. When a serious problem arises, sit down with the school attorney, check out the facts and set up a time table. The law you are dealing with in this case may speak in general terms. For example, if a married teacher is having an affair, would you classify this as immoral? Ask you minister, he will say "Yes." The courts will probably say "No." You must have a baiss for procedding--what constitutes acceptable grounds--the charges must properly reflect the basis for the action. Is the person inefficient, incompetent, immoral? You must have or get first-hand knowledge. Use the attorney's legal skills to make sure the facts are what would be told in court--perhaps through legal interrogation.

Is a charge being presented by a rejected lover; by a mental case? It can be extremely embarrasing to lay charges without grounds. Several years ago, a school psychologist was concerned about the conduct of a physics teacher who was reported to be running around on his hands and knees barking like a dog. The teacher was in his fifties and had over twenty years of teaching experience. The chief school officer authorized the psychologist to interrogate the teacher who was, of course, scared and uncooperative. The psychologist concluded that the many was a psychotic. The board had him undergo psychiatrict tests by a psychiatrist of their own choosing. The teacher tried in vain to get a hearing with the board. It was postponed for thirteen months. By the way, the teacher had also been accused of ringing a gong in the halls and the students had done poorly on the Regents exams that year. At his own expense, the teacher was analyzed by two of the foremost psychiatrists in the state and found perfectly sane. At the board hearing, the psychologist who gathered all this information and who had since left the state refused to appear for the board. Former students were called in. The teacher in class had been teaching reaction time. He had the students simulate driving a car and as he came out from behind his desk on either the right or the left side, the students were to release the pressure on the gas pedal or apply the brakes with either the right foot or the left foot. The board acquitted the teacher knowing that they were going to get sued collectively and individually, and

accomplished and when, how and by whom, determine lines of responsibility, define the constraints which may limit the appraisor in accomplishing his objective. Remember that all teaching cannot be observed. It is essential that you follow the concept of procedural due process. Establish the criteria and make sure that all understand them. Deficiencies should be noted and put in writing. (This includes the supervisor who is not doing his job.) You may be dealing with a principal who is weak or one who lacks competency or one who identifies himself with the teachers, and that last one can cause you some real problems. Evaluate and re-evaluate your subordinates' performance at regular intervals and in writing. This way you check their progress and possibly get clues as to the possible changes that might be desireable. And, of course you must be aware of the progress that is being made between principal and the teachers or the supervisors and the teachers. It is not advisable to have a teacher remain on the staff for two or three years and have the principals suddenly say the teacher is not satisfactory. One who was satisfactory the previous day very seldom undergoes a drastic change overnight. If you are not careful here, you can be subject to the charge of harrassment in dismissal. Memories are short and understandings are clouded with the passage of time. Reduce your important discussions to writing. Written documents are necessary in all evaluations and particularly in building a case. Furthermore, documents must have a chronology which can stand the test of legitimacy. It has been suggested by Dr. Edward T. Green in an article written in a New York State's School Board publication that in the process of removing an employee, if the person chooses to resign you should get two letters, the first should be a formal resignation, the other should stipulate that the resignation comes after seeing the statement of charges and that the choice was made to resign. The only agreement with the teacher would be that you would not release the letter indicating the deficiencies unless the employee chooses to abrogate the agreement with you. Some authorities indicate that in dealing with non-tenured personnel, no answer should be given--or simply state, "we are just looking for someone better."

The keynote to any fair dismissal is a good, fair system of evaluation that works, resulting in fairness to the students, to the teacher and to the Board and your constituents. The best insurance for a favorable decision in any dismissal case is a well-prepared, well-documented case built upon valid reason for dismissal.

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